

EXHIBIT 2

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 - - -

5
6 IN RE: NATIONAL : HON. DAN A.
7 PRESCRIPTION OPIATE : POLSTER
8 LITIGATION :
9 :
10 APPLIES TO ALL CASES : NO.
11 : 1:17-MD-2804
12 :

13 - HIGHLY CONFIDENTIAL -

14 SUBJECT TO FURTHER CONFIDENTIALITY REVIEW

15 VOLUME I

16 - - -

17 April 17, 2019

18 - - -

19 Videotaped deposition of
20 THOMAS PREVOZNIK, taken pursuant to
21 notice, was held at the law offices of
22 Williams & Connolly, 725 12th Street,
23 Washington, D.C., beginning at 9:11 a.m.,
24 on the above date, before Michelle L.
25 Gray, a Registered Professional Reporter,
26 Certified Shorthand Reporter, Certified
27 Realtime Reporter, and Notary Public.

28 - - -

29 GOLKOW LITIGATION SERVICES
30 877.370.3377 ph | 917.591.5672 fax
31 deps@golkow.com

1 need to follow up on.

2 Q. Okay. And how can you tell
3 if an order is a typical order versus one
4 that deviates substantially from a normal
5 pattern?

6 A. Well, I apologize. It's --
7 I don't know if you can say what the
8 difference is a typical order and that.
9 What you have is you have a history of
10 what are -- what are the sales to that
11 distributor. So you would start with
12 that. But as you -- as you -- as the
13 customers -- you know, what questions are
14 you asking the distributors? Are you
15 asking them for their customers? And,
16 you know, who are they selling to?

17 And then you can look at
18 newspaper articles and see the overdose
19 deaths. You can see this is affecting
20 these communities that these product,
21 your products, are going into, because
22 that distributor is putting them in
23 there. So you would have to start asking
24 those questions.

1 Q. But when a manufacturer
2 receives an order from a distributor, how
3 do you tell whether that particular order
4 deviates from a normal pattern, even
5 looking at the sales history to that
6 distributor?

7 A. I'm not sure I'm following.

8 Q. Well, I'm just asking you,
9 DEA has imposed this obligation on
10 manufacturers. And I'm wondering whether
11 DEA has a position on how a manufacturer
12 should determine whether a particular
13 order that comes into it from a
14 distributor, deviates from a normal
15 pattern?

16 A. Well, I mean, you can go
17 back to the internet days when it was --
18 the pattern was all of the sudden
19 products that were skyrocketing to the
20 millions and hundreds of thousands that
21 were never there.

22 Q. So you're saying if a
23 product was not being purchased at all
24 previously and then skyrocketed --

1 A. I'm not saying not at all.
2 But if it's -- if it's not been used
3 much, and then all of the sudden it takes
4 off.

5 Q. Okay. And if it does take
6 off, is that enough to conclude that the
7 product is being diverted?

8 A. I don't think it's enough to
9 conclude that it's diverted, just based
10 on that. But it should be enough to make
11 it a suspicious order, to at least report
12 it.

13 Q. Okay. And how big an
14 increase do you have in mind when you say
15 skyrocket?

16 A. I don't have a number in
17 mind.

18 Q. It sort of depends on the
19 situation?

20 A. It depends on the situation,
21 yeah.

22 Q. All right. How about with
23 respect to unusual frequency? When a
24 manufacturer receives an order from a

1 distributor, how does it determine
2 whether the order is one of unusual
3 frequency?

4 A. Well, again, are they
5 ordering more and more? I mean, again,
6 it depends on the situation. Again,
7 these are not -- not one particular
8 thing. It could be two of them, it could
9 be three of them. It could be any
10 information that you have obtained that
11 has and shows or that indicates that your
12 product may be being diverted, then you
13 have the responsibility to guard that
14 from doing that. So that would trigger a
15 suspicious order.

16 Q. So fair to say whether an
17 order is of an unusual frequency requires
18 some -- some judgment?

19 A. Yes.

20 Q. It's fair to say that it's
21 in the eye of the beholder?

22 A. I don't think it's in the
23 eye of the beholder because it's -- the
24 data is going to show you what is going

1 Does every order that's
2 unusually large necessarily lead to
3 diversion?

4 A. I have no idea.

5 MS. SINGER: Objection.
6 Scope.

7 THE WITNESS: I have no idea
8 what you mean by unusually large.

9 BY MR. O'CONNOR:

10 Q. Okay. As the term
11 "unusually large" is used in the
12 suspicious order monitoring regulation,
13 are orders that are unusually large
14 necessarily diverted?

15 A. Well, for example, a bottle
16 of 100 Vicodin from a manufacturer to a
17 vet, is that unusually large?

18 Q. Is it?

19 A. I don't think it's unusually
20 large, but it would raise my eyebrows of
21 why would -- why would a vet be ordering
22 that bottle when they know that the
23 toxicity to cats and dogs would kill
24 them. So I don't think you can just look

1 at a number and say that's too big.

2 MR. O'CONNOR: Whoever is on
3 the phone needs to go on mute.

4 MR. FINKELSTEIN: Whoever is
5 on the phone please mute your
6 phone.

7 BY MR. O'CONNOR:

8 Q. Before we get back to my
9 question, I just want to be clear.
10 Are -- are vets required to obtain a DEA
11 registration before they order controlled
12 substances?

13 A. Yes.

14 Q. And the DEA issues some
15 veterinarians registrations to allow them
16 to purchase controlled substances?

17 A. Correct.

18 Q. Okay. I do -- I do want to
19 get back to my original question though,
20 which was, is an order that is unusually
21 large, does that order necessarily lead
22 to diversion?

23 MR. FINKELSTEIN: Objection.
24 Vague.

1 THE WITNESS: It may or
2 may -- it may or may not.

3 BY MR. O'CONNOR:

4 Q. Would the same be true of an
5 unusually frequent order?

6 MR. FINKELSTEIN: Same
7 objection. You can answer.

8 THE WITNESS: Correct. It
9 may or may not.

10 BY MR. O'CONNOR:

11 Q. And the same would be true
12 of an order that deviates substantially
13 from the normal pattern?

14 MR. FINKELSTEIN: Same
15 objection. You can answer.

16 THE WITNESS: Correct. It
17 may or may not.

18 BY MR. O'CONNOR:

19 Q. Okay. And putting that
20 together, that means that not every
21 suspicious order leads to diversion,
22 correct?

23 MR. FINKELSTEIN: Objection.
24 Scope. You can answer.

1 THE WITNESS: Could you
2 please repeat that?

3 BY MR. O'CONNOR:

4 Q. Not every suspicious order
5 leads to diversion, correct?

6 A. Correct.

7 Q. I want to talk a little bit
8 about how suspicious order reports are --
9 are used within DEA.

10 Is it fair to say that most
11 suspicious order reports are submitted to
12 field offices?

13 A. I would say based on the
14 fact that the big three are filing
15 electronically, I would say the majority
16 electronically.

17 Q. When an order or when
18 suspicious order reports are filed
19 electronically, does that mean they are
20 filed with headquarters?

21 A. Yes. On the Legacy and the
22 vetted system.

23 Q. Okay. And do registrants
24 that are not reporting electronically to

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16 VOLUME II
17 - - -
18

19 April 18, 2019
20 - - -
21

22 Continued videotaped
23 deposition of THOMAS PREVOZNIK, taken
24 pursuant to notice, was held at the law
 offices of Williams & Connolly, 725 12th
 Street, Washington, D.C., beginning at
 8:16 a.m., on the above date, before
 Michelle L. Gray, a Registered
 Professional Reporter, Certified
 Shorthand Reporter, Certified Realtime
 Reporter, and Notary Public.

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1 "Approximately how many websites
2 currently offer to sell controlled
3 substances illegally over the internet?"

4 Do you see that?

5 A. Yes.

6 Q. Okay. Now, if you look down
7 towards the -- the middle of the
8 response, there's a state -- there's a
9 sentence that starts it should be noted.
10 Do you see that?

11 A. Yes.

12 Q. The statement reads: "It
13 should be noted that there are legitimate
14 pharmacies that provide controlled
15 substances via the internet and operate
16 daily within the boundaries of the law."

17 Do you see that?

18 A. Yes.

19 Q. Do you agree with that?

20 MR. FINKELSTEIN: Scope.

21 Calls for speculation.

22 THE WITNESS: Yeah, this is
23 before the Ryan-Haight Act. So,
24 yes.

1 BY MR. STEPHENS:

2 Q. Okay. So my -- my point
3 was, some internet pharmacies in the eyes
4 of DEA were rogue and diverted opioids --
5 or diverted controlled substances, fair?

6 A. Fair.

7 Q. All right. Other online
8 internet pharmacies were not rogue
9 pharmacies and operated within the
10 boundaries of the law in the eyes of DEA
11 as of May 16, 2007, based on what DEA
12 told the Senate, right?

13 A. Correct.

14 Q. Okay. Now, did DEA blame
15 the internet pharmacies who were acting
16 within the boundaries of the law for the
17 actions of the rogue internet pharmacies
18 who DEA thought were diverting
19 prescription opioids?

20 MS. SINGER: Objection.
21 Scope.

22 MR. FINKELSTEIN: Vague.

23 Incomplete hypothetical.

24 THE WITNESS: Not really

1 sure what you mean by the use of
2 the word "blame."

3 BY MR. STEPHENS:

4 Q. Did DEA take any action,
5 civil, regulatory, administrative,
6 against legitimate internet pharmacies
7 who DEA thought was acting within the
8 boundaries of the law for the actions of
9 the other internet pharmacies who DEA
10 thought were rogue and were diverting
11 controlled substances?

12 MR. FINKELSTEIN: Vague.
13 Incomplete hypothetical.

14 THE WITNESS: I'm not aware
15 of it.

16 BY MR. STEPHENS:

17 Q. Okay. So one aspect that
18 DEA included in its internet distributor
19 briefing related to the percentage of
20 controlled versus noncontrolled
21 substances that a particular pharmacy
22 ordered, right?

23 MR. FINKELSTEIN: Vague.

24 THE WITNESS: Correct.

1 answered.

2 THE WITNESS: Correct.

3 MR. STEPHENS: I'm just
4 trying to set the time frame for
5 the witness.

6 BY MR. STEPHENS:

7 Q. Do you understand what I'm
8 saying, Mr. Prevoznik?

9 A. Yes.

10 Q. Okay. All right. So it was
11 in the -- in -- approximate time frames
12 here, and clarify to whatever degree you
13 feel you need to, Mr. Prevoznik. But
14 roughly in 2009, 2010, and shortly after
15 that, the DEA started to have more issues
16 with rogue pain clinics, right?

17 A. Correct.

18 Q. Okay. Did DEA ever conduct
19 a distributor briefing with retail chain
20 pharmacies related to rogue pain clinics?

21 MR. FINKELSTEIN: Asked and
22 answered.

23 THE WITNESS: Correct.

24 BY MR. STEPHENS:

1 Q. Okay. So now like rogue --
2 or I'm sorry, strike that. Let me re-ask
3 the question.

4 Like internet pharmacies,
5 DEA -- DEA would agree that not all pain
6 clinics diverted controlled substances?

7 MR. FINKELSTEIN: Calls for
8 speculation. Asked and answered.

9 THE WITNESS: Correct.

10 BY MR. STEPHENS:

11 Q. Okay. There was some good
12 pain clinics who operated within the
13 boundaries of the law and there were some
14 rogue pain clinics that operated outside
15 the boundaries of the law.

16 Is that fair?

17 MS. SINGER: Same objections
18 as to scope of the questioning
19 here.

20 THE WITNESS: Yes.

21 BY MR. STEPHENS:

22 Q. Okay. Did DEA file any
23 lawsuits against the good pain clinics to
24 try and make them pay for the harm caused

1 by the rogue pain clinics?

2 MR. FINKELSTEIN: Objection.

3 Vague.

4 THE WITNESS: Not that I'm
5 aware of.

6 BY MR. STEPHENS:

7 Q. Okay. And like the rogue
8 internet pharmacies that preceded them,
9 these rogue pain clinics that were
10 diverting controlled substances typically
11 distributed a lopsided ratio of
12 controlled substances to noncontrolled
13 substances?

14 MS. SINGER: Objection.

15 Scope.

16 THE WITNESS: To my -- yes.

17 BY MR. STEPHENS:

18 Q. Okay. The -- rogue pain
19 clinics were not full service pharmacies
20 like a retail chain pharmacy like Walmart
21 or CVS, Rite Aid or Walgreens, right?

22 MR. FINKELSTEIN: Calls for
23 speculation. Foundation.

24 THE WITNESS: I'm not sure